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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA, ) No. CR 00-20140-RMW  
Plaintiff, )  
v. ) STIPULATION AND []  
REGINALD LUCORY DEMERY, ) ORDER FOR SENTENCING  
Defendant. ) MODIFICATION UNDER  
18 U.S.C. § 3582(c)(2)

IT IS HEREBY STIPULATED AND AGREED, by and between the parties acting through their respective counsel, that:

1. The Court makes its own motion for a modification of the defendant's sentence pursuant to 18 U.S.C. § 3582(c)(2).

2. Defendant's original guideline calculation was as follows:

### Total Offense Level 31

## Criminal History Category II

Sentencing range of 121 to 151 months of imprisonment

1       3. Defendant was sentenced on July 9, 2001 to 168 months of imprisonment. At sentencing,  
2 the district court departed upward from criminal history category II to III based on under-  
3 representative criminal history category. The sentence of 168 months of imprisonment was  
4 111% of the high-end (151 months) of Demery's guideline's range. Using the same 111% ratio  
5 with the high end of the newly applicable guideline range yields a sentence of 135 months of  
6 imprisonment, which is recommended in the Reduction of Sentence Report filed by the United  
7 States Probation Office.

8       4. Defendant is eligible for a modification of his sentence pursuant to 18 U.S.C. § 3582(c)  
9 and U.S.S.G. § 1B1.10(c), Amendment 706 of the *United States Sentencing Commission*  
10 *Guidelines Manual*.

11      5. Defendant's revised guideline calculation is as follows:

12       Total Offense Level 29

13       Criminal History Category II

14       Sentencing range of 97-121 months of imprisonment

15      6. According to the modified pre-sentence report, defendant's conduct while imprisoned  
16 reveals that he has maintained clear conduct and has had no incident or disciplinary reports. He  
17 has received positive work evaluations and has completed various classes.

18      7. Based upon the foregoing, the parties hereby stipulate that a sentence of 135 months is  
19 appropriate in this matter.

20      8. Defendant's current projected release date is July 13, 2013.

21      9. The parties further stipulate that all other aspects of the original judgment order including  
22 the length of term of supervised release, all conditions of supervision, fines, restitution, and  
23 special assessment remain as previously imposed.

24      10. Defendant stipulates that he waives and does not request a hearing in this matter  
25 pursuant to Fed. R. Crim. P. 43, 18 U.S.C. § 3582(c)(2); *United States v. Booker*, 543 U.S. 220  
26 (2005) and *Kimbrough v. United States*, 128 S.Ct. 558 (2007); *United States v. Hicks*, 472 F.3d  
27 1167 (9<sup>th</sup> Cir. 2007).

28      11. Defendant waives his right to appeal the district court's sentence.

1       12. Accordingly, the parties agree and stipulate that an amended judgment may be entered  
2 by the Court in accordance with this stipulation pursuant to 18 U.S.C. § 3582(c) and U.S.S.G. §  
3 1B1.10(c), Amendment 706 of the *United States Sentencing Commission Guidelines Manual*.

4

5 IT IS SO STIPULATED:

6

7 DATED: June 26, 2008

Respectfully submitted,

8 JOSEPH P. RUSSONIELLO  
9 United States Attorney

10 \_\_\_\_\_/s/  
11 JOHN N. GLANG  
12 Assistant United States Attorney

13 DATED: June 26, 2008

14 \_\_\_\_\_/s/  
15 ALLEN SCHWARTZ  
16 Attorney for defendant Reginald Lucory Demery

## ORDER

Based upon the stipulation of the parties, and for good cause shown, IT IS HEREBY ORDERED that:

1. The Court is making its own motion for a modification of the defendant's sentence pursuant to 18 U.S.C. § 3582(c)(2);
  2. Defendant is eligible for a modification of his sentence pursuant to 18 U.S.C. § 3582(c) and U.S.S.G. § 1B1.10(c), Amendment 706 of the *United States Sentencing Commission Guidelines Manual*;
  3. Defendant has waived his right to a hearing in this matter pursuant to Fed. R. Crim. P. 43, 18 U.S.C. § 3582(c)(2); *United States v. Booker*, 543 U.S. 220 (2005) and *Kimbrough v. United States*, 128 S.Ct. 558 (2007); *United States v. Hicks*, 472 F.3d 1167 (9<sup>th</sup> Cir. 2007);
  4. Defendant has waived his right to appeal the district court's sentence;
  5. Defendant's revised guideline calculation under U.S.S.G. § 1B1.10(c), Amendment 706 of the *United States Sentencing Commission Guidelines Manual* is:

## Total Offense Level 29

## Criminal History Category II

Sentencing range of 97-121 months of imprisonment

6. The appropriate sentence in this matter is 135 months of imprisonment. All other aspects of the original judgment order, including the length of term of supervised release, all conditions of supervision, fines, restitution, and special assessment remain as previously imposed.

7. An amended judgment shall be entered by the Court in accordance with the parties' stipulation pursuant to 18 U.S.C. § 3582(c) and U.S.S.G. § 1B1.10(c), Amendment 706 of the *United States Sentencing Commission Guidelines Manual*.

DATED: 7/16/08

Ronald M. Whyte  
RONALD M. WHYTE  
United States District Court Judge